

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 3287 OF 2023

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016

Department of State Tax

Through the Deputy Commissioner of
State Tax

...Applicant

Vs.

Metalyt Forgings Limited

...Respondents

In the matter of

C.P.(IB) No. 1555/MB/2017

State Bank of India

Financial Creditor

Vs.

Metalyt Forgings Limited

Corporate Debtor

Order delivered on: 02.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant : None
For the RP : Mr. Siddharth Marathe, Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Application IA 3287/2023 is filed by Department of Sales Tax through the Deputy Commissioner of State Tax (E-614), GST Bhawan, Yerwada, Pune (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of the M/s Metalyst Forgings Ltd. (“Corporate Debtor”) in terms of Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) seeking condonation of delay in admission of claim. The Applicant is seeking following reliefs -
 - a. To condone the delay of 878 days in loading the claim;
 - b. To allow the present Application and direct the Resolution Professional to register the claim of the Applicant and deal the same in accordance with the provisions of the Code.
2. That the applicant is a statutory authority and Govt. Department which is responsible for collection of revenue and taxes applicable under GST Act and the Corporate Debtor was an assessee of the applicant/Department under the GST Act and was liable to deposit the tax as per law for the transactions done during the particular financial year. The present application is being filed through authorized signatory of the Department of the state tax,

Maharashtra, who has been authorized to file present application. The Applicant states that there is a delay of 878 days in lodging the claim. The Applicant states that the said delay is not intentional.

3. The Tribunal admitted the Petition seeking initiation of CIRP in the matter of Corporate Debtor vide order dated 15/12/2017 (Admission Order") and appointed Sh. Dinkar Venkatasubramanian as the interim resolution professional ("IRP") for the Corporate Debtor.
4. The public announcement was made by the IRP on 23/12/2017 inviting the claims under the CIRP and the last date of receipt of proof of claim was 03/01/2018. The Applicant registered their claim through Form B dated 19/01/2021 amounting to INR.11,97,94,337/- for the period of 2005- 06 To 2015-16.
5. The IRP/RP by email dated 22/01/2021 rejected the claim stating that "*The undersigned submits, that in the instant case of the Corporate Debtor, the public notice was issued by the undersigned in leading national and regional newspapers in accordance with the CIRP Regulations, on December 22, 2017, for the purpose of inviting creditors to submit any claims they may have in respect of the Corporate Debtor for the pre-CIRP period. Furthermore, a resolution plan in respect of the Corporate Debtor was approved by the committee of creditors of the Corporate Debtor ("CoC") in terms of Section 30(4) of the Code, on August 25, 2018. However, it may be noted that no claim was received from Department of State Tax during this time*".

6. One of the unsuccessful Resolution Applicant had filed a MA 1272/2018 seeking, cancellation of process of submission, finalization and filing of the resolution Plan for approval of this adjudicating authority as being vitiated by misrepresentation and/or mutual mistake of fact and also seeking stay on encashment of bid bond guarantee. This Tribunal allowed the said Application and passed an order dated 27/09/2019 dismissing MA 956/2018 seeking approval of the Resolution Plan from this Tribunal.

7. During the Course of hearing in present applicant. Ld. Counsel for the Resolution Professional of the Corporate Debtor informed that the Resolution Plan in the present case was rejected by this Tribunal and the Order of Liquidation came to be passed. However, the Liquidation process could not commence during the pendency of appeal before NCLAT, in view of interim stay. Subsequently this Order was upheld by the Hon'ble National Company Law Appellate Tribunal. However, the Committee of Creditors and Successful Resolution Applicant are in appeal before the Hon'ble Supreme Court where the Hon'ble Supreme Court stayed operation of the Liquidation Process. The matter is sub-judice before the Hon'ble Supreme Court.

8. In view of foregoing facts and circumstances of the case, we are of considered view that the Resolution Professional can consider the claim of the applicant only if the Order dated 27.09.2019 passed by this Tribunal is upheld by Hon'ble Supreme Court and process of calling fresh Resolution Plan is started. Accordingly, we hold as follows –

- I) In case, the Hon'ble Supreme Court sets aside the Order of this Tribunal and approves the Resolution Plan, all claims would stand extinguished and nothing would survive in this application;
- II) In case, the Hon'ble Supreme Court sets aside the Order of this Tribunal and directs this Tribunal to rehear the MA 956/2018, the applicant's claim shall be admitted by the Resolution Professional condoning the delay, as the said claims pertaining to Year upto 2010-11 (Upto sl. No. 11 of Table at Page 33 of the Petition) were in existence prior to initiation of CIRP and must be reflecting in the records of the Corporate Debtor in view of fact that deferment of payment of these outstanding dues was obtained by the Corporate Debtor from the Respondent's Departmental authorities. As regards amounts reflecting at Sl. No. 12, 13, 14 & 15 are concerned, no claim can survive as the demands in relation to these claims were raised after approval of plan by CoC i.e. 25.08.2018 or immediately prior to date but no claim was filed prior to approval of plan by CoC in view of decision of Hon'ble Supreme Court in case of *RPS Infrastructure Limited vs. Mukul Kumar & Anr, (2023) ibclaw.in 102 SC* reaffirming that "*The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC*".

III) In case, the Hon'ble Supreme Court upholds the Order in MA 956/2018 passed by this Tribunal, the Corporate Debtor would be admitted into Liquidation, and the applicant shall be at liberty to file claim in the Liquidation process in accordance with the Code.

9. With the aforesaid observations, IA 3287/2023 is disposed of in the present facts and circumstances of the case as detailed above.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)